

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES ROBERT BATES,

Plaintiff,

Case No. 15-cv-10109

v.

Honorable Patrick J. Duggan

OBELL WINN, et al.,

Defendants.

**ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND DENYING PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

On October 27, 2014, pro se Plaintiff James Robert Bates, a prisoner in the custody of the Michigan Department of Corrections, instituted this prisoner's civil rights case against Defendant Obell Winn, the warden of the Saginaw Regional Correctional Facility, and other prison officials pursuant to 42 U.S.C. § 1983. Although Plaintiff filed his pro se complaint in the United States District Court for the Western District of Michigan, the action was subsequently transferred to the Eastern District of Michigan. In his complaint, Plaintiff alleges that his Eighth Amendment rights were violated after he was assaulted by two inmates and later

denied medical treatment. The Court referred the case to Magistrate Judge Elizabeth A. Stafford for all pretrial matters pursuant to 28 U.S.C. § 636(b)(1).

On June 5, 2015, Plaintiff filed a motion for default judgment as to Defendant Winn for failure to answer or otherwise defend this lawsuit. On June 8, 2015, Magistrate Judge Stafford issued a Report and Recommendation (“R&R”), recommending that the Court deny the motion because, under 42 U.S.C. § 1997e(g)(1), “any defendant may waive the right to reply to any action brought by a prisoner . . . under § 1983” and “such waiver shall not constitute an admission of the allegations contained in the complaint.” Magistrate Judge Stafford also noted that, contrary to Plaintiff’s contention, Defendant Winn defended this action by filing a motion for summary judgment on May 20, 2015. At the conclusion of the R&R, Magistrate Judge Stafford informed the parties that any objections to the R&R must be filed within fourteen days and that the failure to file specific objections constitutes a waiver of any further right of appeal. Neither party has filed objections to the R&R, and the time for doing so has expired.

Having thoroughly reviewed the parties’ papers and the R&R, the Court concurs with the conclusion reached by Magistrate Judge Stafford. The Court further notes that although not explicitly referenced in the R&R, Defendant Winn executed a waiver of service, which was sent on May 11, 2015 and docketed by this Court on May 15, 2015. (ECF No. 26.) The docket further reflects that

Defendant Winn was not required to file an answer or otherwise file a responsive pleading until July 10, 2015. (*Id.*) For this reason, Plaintiff's June 5, 2010 motion for default judgment was filed prematurely, and could have been denied on this basis alone.

Accordingly,

IT IS ORDERED that Magistrate Judge Stafford's R&R (ECF No. 31) is **ADOPTED** and Plaintiff's motion for default judgment (ECF No. 29) is **DENIED**.

Dated: July 17, 2015

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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Allan J. Soros, AAG